IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.999 OF 1996.

M/s.New India Assurance Co.ltd. : Appellants.

versus

Smt.Surekha Ramdas Yadav & ors. : Respondents.

Mr.S.R.Singh for the appellants.

None present for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 11th March 2005.

ORAL ORDER

1. Heard advocate for the Insurance Company. Nobody is present for the respondents. Only short question is raised by the counsel for the Insurance Company/appellant and, that is, whether the Commissioner for Workmen's Compensation Raigad at Alibag was justified in imposing 50% penalty on the amount of compensation awarded upon the Insurance Company. The compensation awarded was Rs.80,664/-. The accident in

question arose in the following manner. Deceased Ramdas died during the course of employment while serving with Opponent No.1. He was working as driver on trailer belonging to Opponent No.1 and while he was proceeding towards Pen from Bombay on 19th May 1994, he met with an accident. The vehicle was insured with Opponent No.2. The wife of the deceased, therefore, filed an application before the Commissioner for Workmen's Compensation. In fact, this Issue was raised before the Commissioner and it was contended by the appellant that Insurance Company cannot be saddled with penalty. But the Court disagreed with this submission and imposed penalty upon the Insurance Company.

2. The counsel for the appellant has relied upon the judgment of the Supreme Court reported in **1998 ACJ 1 (Ved Prakash Garg v. Premi Devi).** It was a case arising out of a motor accident in the course of employment for compensation under the Workmen's Compensation Act and Motor Vehicles Act and, in that case, the Supreme court gave clear cut findings that penalty amount does not automatically flow from the main liability incurred by the insured employer but it is

imposed on account of personal fault of the insured not backed up by any justifiable cause.

. In that case the Insurance Company carried the matter in appeals before the High Court of Himachal Pradesh on the ground that the insurance company would be liable under the contract of insurance only to make good the claims for compensation so far as the principal amounts were concerned, but it could not have been made liable to pay the amounts of penalties with interest as awarded by the Workmen's Commissioner as these amount of penal nature were awarded against the insured owner on account of his personal default as per Section 4-A (3) of the Compensation Act and for such default on the part of the insured the insurance company was not liable to reimburse the insured. The High Court of Himachal Pradesh allowed the appeals and set aside the awards passed by the Workmen's Commissioner insofar as they fastened the liability to pay the penalty and interest on the insurance company. It is also clarified by the High Court in that case that the claimants shall be at liberty to recover the amount of penalty and interest in accordance with law from the

employer.

. After considering the proviso to Section 147(1)(b) of the M.V.Act as well as by the terms of the insurance policy found in the provisos (b) and (c) to subsection (1) of section II thereof and, after making interpretation of the schemes under section 4-A of the Compensation Act, the Supreme Court held as under :-

> "When an employee suffers from a motor accident injury while on duty on the motor vehicle belonging to the insured employer, the claim for compensation payable under the Compensation payable under the Compensation Act along with interest thereon, if any, as imposed by the Commissioner, under sections 3 and 4-A(3))a) of the Compensation Act will have to be made good by the insurance company jointly with the insured employer. But so far as the amount of penalty imposed on the insured employer under contingencies contemplated by Section 4-A(3)(b) is concerned as that is on account of personal fault of the

> insured not backed up by any justifiable caused, the insurance company cannot be made liable to reimburse that part of the penalty amount imposed on the employer. The latter because of his own fault and negligence will have to bear the entire burden of the said penalty amount with proportionate interest thereon if imposed by the Workmen’s Commissioner."

Ultimately the Supreme Court confirmed the judgments of the High Court to the extent of exonerating the Insurance companies of the liability to pay penalty imposed on the insured employers by the Workmen’s Commissioner.

3. In view of this, this appeal is required to be partly allowed. Hence I pass the following order :-

:ORDER:

> The appeal is partly allowed.
>
> The order of the Commissioner for Workmen’s Compensation, Raigad at Alibag

directing the appellant/insurance Company to pay 50% penalty is quashed and set aside.

It the appellant/insurance company has deposited the amount, then whatever is in excess pursuant to this order shall be permitted to be withdrawn by the appellant.

No order as to costs as nobody appears for the respondents.

[D.G.DESHPANDE]

11/03/2005 JUDGE.